

High Court Orders New Trial for Black; FBI Eavesdropped on Baker Associate

By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court ordered a new tax evasion trial yesterday for Fred B. Black Jr., former business associate of Robert G. (Bobby) Baker and a victim of admitted FBI electronic eavesdropping.

The Court did not say that Black had been denied a fair trial solely because his Sheraton-Carlton Hotel suite had

been "bugged" and conversations with his lawyer overheard.

Instead the Court, in a 5 to 2 decision, said the best way to test whether Black could receive a fair trial was to start over again at the trial level because the bugging came to light long after his conviction.

Black had been under sentence of 15 months to four years in prison and a \$10,000 fine.

Black and Baker, former Senate majority secretary, were business partners in a vending machine venture and codefendants in a civil lawsuit that erupted in a national scandal in 1963 over Baker's outside financial interests.

Baker, who resigned under fire, also faces trial, scheduled for Jan. 9, on tax evasion and other charges. Both men have based their defenses largely on counter-charges that the Government engaged in massive invasions of their privacy and right to counsel.

The bugging of Black's suite came to light last May 24, three weeks after the Supreme Court had refused to review Black's conviction, in an extraordinary confession by Solicitor General Thurgood Marshall.

Marshall volunteered that both before and after Black was indicted in 1963 FBI

agents had planted a little microphone in the woodwork of his suite in connection with an investigation "unrelated" to his tax discrepancies. It is widely assumed that principal investigation targets were Nevada gambling figures.

The Solicitor General insisted that the Government had documentary case against Black that did not depend on evidence obtained "from any improper source" and he offered to show this at a limited hearing in Federal District Court here. But he objected

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FRED B. BLACK JR.
... new trial ordered

to any order setting aside the jury verdict against Black.

Black's lawyers argued that a fair trial would never be possible because there was no way of making sure that the monitored information had no impact on trial strategy. They argued for outright dismissal of the charges, a step rarely decreed at the Supreme Court level.

The Court set a middle course, vacating its earlier denial of review, setting aside the conviction and, without further argument, sending the case back for a new trial.

This procedure will "permit

the removal of any doubt as to Black receiving a fair trial with full consideration being given to the new evidence reported to us by the Solicitor General," the Court said in an unsigned opinion.

Justices John M. Harlan and Potter Stewart dissented. Not participating in the decision were Justice Byron R. White, who was Deputy Attorney General in 1961 and 1962, and Justice Abe Fortas, who once was Baker's lawyer.

Harlan said the majority "puts the cart before the horse" in setting aside the conviction "prematurely." He said Marshall had suggested "the orderly procedure" for fully developing the facts surrounding the eavesdropping.